APAC Agricultural Policy Analysis Center

PolicyPennings by Daryll E. Ray & Harwood D. Schaffer

Eleven proposed GIPSA rules did not make the final cut

After a year-and-a-half of wrangling and responding to Congress and input from stakeholders, the USDA published a final GIPSA rule on December 9, 2011. For some producers the result was far less than they hoped for while packers and representatives of the meat industry still found lots to complain about in the new rule.

In announcing the publication of the final rule, Secretary of Agriculture Tom Vilsack noted that the most recent Agriculture Appropriations bill included language prohibiting the Department from moving forward on a number of important provisions in the proposed rule. A full copy of the full rule is available at http://www.gipsa.usda.gov/Federal%20Register/fr11/12-9-11.pdf.

In this column, we will focus on the issues that were in the proposed rule and not included in the final rule. Some would say that the elimination of many of these items represent an outsized influence of the meat industry compared to the ranchers and growers who actually produce the animals that are slaughtered.

In the final rule, the USDA noted eleven provisions in the proposed rule that were not finalized in the rule published on December 9, 2011.

Value-Added Production and Premiums - "The proposed rule included several provisions related to the potential use of price premiums and related types of contracts such as marketing agreements in a manner that are potential violations of the P&S Act." This portion of the rule was intended to ensure that all producers of like animal quality would be entitled to the same pay. These provisions were not included in the final rule.

Recordkeeping - "Section 201.94(b) of the proposed rule that would have required packers, swine contractors and live poultry dealers to retain records justifying differential pricing decisions is not included in this final rule."

Packer-to-Packer Sales and Relationships With Dealers – "Section 201.212 related to packer-to-packer sales and packer relationships with dealers will not be finalized. Although some comments supported inclusion of these provisions, many comments raised serious concerns about potential adverse effects on the marketplace, such as encouraging further vertical integration and reducing the number of dealers and other buyers. While this section will not be finalized, we expect covered packers and dealers to continue to comply with the related portions of the Act (7 U.S.C. 192c–g) and existing regulations (9 CFR 201.69–70)."

Prohibitions and Requirements Related to Capital Investments – "While section 201.217 of the proposed rule establishing specific requirements related to capital investments is not included in this final rule, the criteria required by the 2008 Farm Bill are being finalized, in modified form. Considering the variation that exists with respect to capital investments and payment terms in contracts, we believe stating criteria that the Secretary may use to determine whether certain terms in arrangements and contracts are in violation of the P&S Act is more appropriate. The associated definition of 'Capital Investment' (proposed section 201.2(n)) will also not be included in this final rule."

Definition of Competitive Injury and Likelihood of Competitive Injury – "Sections 201.2(t) and (u) of the proposed rule provided definitions for 'competitive injury' and 'likelihood of competitive injury' in an attempt to provide more clarity on the meaning of these terms. These definitions are not necessary for the purposes of this final rule and therefore are not included."

Applicability of Contracts – The USDA eliminated this paragraph because the "sections related to price premiums and discounts are not included in the final rule."

Scope of Section 202(a) and (b) – What could be seen as the most important provision in the proposed rule was eliminated from the final rule. This eliminated provision clarified that these two sections of Packers and Stockyards Act describing unfair practices on the part of packers does not require "harm to competition" for producers to be able to sue a packer in court. As a result, for instance, slaughter facilities can still prohibit producers from watching their animals being weighed at the slaughter facility—an activity parallel to one that grain producers take for granted and exercise on a regular basis—without fear of being sued for unfair practices.

Unfair, Unjustly Discriminatory, and Deceptive Practices or Devices – In the proposed rule the USDA listed conduct that it considered to be unfair or deceptive and thus a violation of Section 202 (a). Because the clarification of 202 (a) was eliminated, the list of unfair and deceptive practices was eliminated as well.

Undue or Unreasonable Preference or Advantage – Because the clarification of Section 202 (b) was not included in the final rule the criteria determining conduct that would violate 202(b) was eliminated as well.

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Livestock and Poultry Contracts – The proposed rule included provisions to improve the transparency of poultry contracts by requiring that samples of each type of contract be published. This requirement was not included in the published rule.

Tournament Systems – The proposed rule prohibited paying growers less than the base pay and that growers being ranked together include only growers with the same type of houses. From the wording of the final rule it remains a possibility that the USDA may revise the proposed rule in the future.

For those producers for whom these eliminated provisions would reduce harm that they believe they are suffering at the hands of slaughter facilities, there appears to be few means of addressing their grievances.

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